



Llywodraeth Cymru
Welsh Government

Code of Recommended Practice for Local Government Publicity

Explanatory Memorandum

and Explanatory Notes

JANUARY 2022

Contents

Minister's Declaration	Page 3
------------------------	--------

PART 1: EXPLANATORY MEMORANDUM

Chapter 1: Description	Page 4
------------------------	--------

Chapter 2: Matters of special interest to the Legislation, Justice and Constitution Committee	Page 4
---	--------

Chapter 3: Legislative Background	Page 4
-----------------------------------	--------

Chapter 4: Purpose and intended effect of the Legislation	Page 5
--	--------

Chapter 5: Consultation	Page 5
-------------------------	--------

Chapter 6: Competition Assessment	Page 7
-----------------------------------	--------

PART 2: REGULATORY IMPACT ASSESSMENT

Chapter 7: Regulatory Impact Assessment	Page 7
---	--------

Explanatory Memorandum and Regulatory Impact Assessment - Code of Recommended Practice for Local Authority Publicity

This Explanatory Memorandum has been prepared by the Local Government Democracy Division of the Welsh Government, and is laid before the Senedd in accordance with Standing Orders 27.1 to 27.13, as modified by Standing Order 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Code of Recommended Practice for Local Authority Publicity. I am satisfied that the benefits outweigh any costs.

Rebecca Evans MS,
Minister for Finance and Local Government

19 January 2022

PART 1

Chapter 1: Description

- 1.1 The Code of Recommended Practice for Local Authority Publicity (“the Code”) provides guidance on the content, style, distribution and cost of local authority publicity. Local authorities are required by legislation to have regard to the Code in coming to any decision on publicity. The Code is being updated and revised to reflect changes that have taken place since the last Code was issued in 2014.

Chapter 2: Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

Chapter 3: Legislative background

- 3.1 The Code is issued under powers conferred on the Secretary of State under section 4(1) of the Local Government Act 1986 (‘the 1986 Act’). Those powers were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The powers of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- 3.2 Local authorities, defined in section 6(2) of the 1986 Act, are required by section 4(1) to have regard to the Code in coming to any decision on publicity. ‘Publicity’ is defined in section 6(4) of the 1986 Act as ‘any communication, in whatever form, addressed to the public at large or a section of the public’.
- 3.3 The existing Code was issued in 2014 by the then Minister for Local Government, Finance and Communities. Section 4(4) of the 1986 Act requires that before issuing, revising or withdrawing the Code the Welsh Ministers must consult such associations of local authorities as appear to be concerned, and any local authority with whom consultation appears to be desirable. The consultation period ran for 8 weeks from 18 October to 10 December 2021.
- 3.4 The revised Code will apply to all Welsh local authorities that fall within the definition in section 6(2) or that have Part 2 of the 1986 Act applied to them. This includes corporate joint committees by virtue of them being a committee of two or more county or county borough councils which

discharges functions which would otherwise fall to be discharged by the member councils.

- 3.5 The proposed revisions to the Code are laid before the Senedd and are subject to annulment. It is intended that the revisions to the Code will be made and come into force no later than 18 March 2022.

Chapter 4: Purpose & intended effect of the legislation

- 4.1 There are a number of issues which have particularly arisen in the last year or two which suggest that it is timely to review the existing Code which was last published in 2014.
- 4.2 The proposed alterations contain guidance on the following issues:
- the changing nature of local authority communication channels such as increased use of social media and other digital platforms;
 - the broadcasting of council meetings;
 - the Well-being of Future Generations (Wales) Act 2015;
 - the Local Government and Elections (Wales) Act 2021;
 - the Local Elections (Principal Areas) (Wales) Rules 2021; and
 - the Local Elections (Communities) (Wales) Rules 2021.
- 4.3 The Code applies to county and county borough councils, national park authorities and town and community councils in Wales. As fire and rescue authorities in Wales are not defined as 'local authorities' in section 6(2)(a) of the Local Government Act 1986 the Code does not apply to them in the same manner. The Code does however include reference to fire and rescue authorities as the principles it contains are relevant to their activities and it is suggested these authorities take note of and adhere to these principles.

Chapter 5: Consultation

- 5.1 The Welsh Government held a virtual consultation event on 25 November seeking comments on the draft Code from an invited audience in advance of the closing date. It also issued an electronic consultation on the draft amended Code on its website. The consultation ran for 8 weeks from 18 October to 10 December 2021, and requested views on the amended provisions within the Code.
- 5.2 The consultation was targeted and sent directly to:
- Chief Executives of Principal Councils;
 - Leaders of Principal Councils
 - Monitoring Officers;

- Chairs & Chief Executives of Welsh National Park Authorities;
- Chairs & Clerks of Welsh Fire and Rescue Authorities;
- Democratic Services of County Borough Councils, National Park Authorities, and Fire and Rescue Authorities; and
- Leader and CEO of the WLGA
- Leader and CEO of One Voice Wales.

- 5.3 Thirty three representatives from across the regions attended the event on 25 November. In addition, 7 written responses were received. Responders at both the event and via written responses were broadly content with the proposals in the draft Code but some attendees at the event requested clarification on the status of corporate joint committees (CJCs) and fire and rescue authorities (FRAs) and whether the Code applied to them. A separate meeting with FRA Monitoring Officers was held on 9 December to help clarify the legal status of FRAs. The draft Code has been amended to provide clarification by way of reference to specific legislation on this. The position is that CJCs are legally required to have regard to the Code when coming to any decision on publicity. FRAs are not legally required to have regard to the Code when making decisions in relation to publicity but should be encouraged to comply with the principles of the Code as a matter of good practice. FRAs are therefore referenced in the Code.
- 5.4 There is also a view from a small number of respondents that whilst the more modern communication channels were helpful to achieve greater reach and better value for money and the better option in certain circumstances the option to use local council newspapers should remain. However, another view is that the legal requirement on Councils to use local press in some cases should be removed. The use of council newspapers is a long-standing issue with principal councils but this cannot be addressed in the Code. This is because the requirement to publish such notices is set out in a wide range of legislation covering a number of principal council service areas such as highways maintenance. In some cases, addressing the situation might require amendment to primary legislation or the remaking of statutory instruments. This is an issue that would also require extensive public consultation to ensure no groups were disadvantaged by a change in the method of publication of such notices.
- 5.5 One respondent felt that the publication of councillors' home addresses should be a matter for the individual councillor to decide. The policy on this remains to ensure no members' home addresses are published. This is because providing any choice for members could result in local pressure for members who would prefer not to publish their addresses to do so. This could result in unacceptable harms to the well-being of those members.

Chapter 6: Competition Assessment

- 6.1 There are no market implications associated with the updating of the Code. It has no impact on business, charities or the voluntary sector.

PART 2

Chapter 7: Regulatory Impact Assessment (RIA)

- 7.1 Options for achieving the policy objectives in relation to the amendments to the Code, as discussed in Section 4, are:

Option 1 – Do nothing and do not make any amendments to the Code

or

Option 2 – Make amendments to update the Code.

Option 1 – Costs and benefits

- 7.2 There would be no additional financial costs to the Welsh Government or local authorities as a result of failing to make the revisions to the Code.
- 7.3 Doing nothing, however, would result in local authorities having regard to a Code of Recommended Practice for Local Authority Publicity that is out of date and does not reflect current legislation in this area. An up to date Code is an important part of ensuring appropriate use of public funds in the run up to the election.

This option is not recommended

Option 2 - Costs and benefits

- 7.4 The revised Code has already been drafted and consulted on, the associated costs are therefore 'sunk' costs and disregarded in this RIA.
- 7.5 Sections 39 to 41¹ of the Local Government and Elections (Wales) Act 2021 places a duty on principal councils to encourage local people to participate in decision-making and produce and keep under review a strategy to encourage this participation. This statutory duty does not

¹ Come into effect on the 5th of May 2022 by virtue of SI 2021/231

extend to other authorities covered by this Code but the principles of engagement, involvement and providing people with up to date information are all good practice that should be adopted by all bodies covered by this Code.

- 7.6 This requirement on principle councils to engage the public in its decision-making includes live broadcasting of full council meetings where they are open to the public. Many local authorities already broadcast their meetings so there would be limited if any costs involved for these authorities. As public bodies update their communication methods and tools, and the virtual world becomes the norm because of the pandemic, it is likely that the facilities to broadcast full council meetings would be very possible for principal councils without significant additional cost.
- 7.7 Encouraging involvement from local people in the local authority's decision-making process is an existing commitment under The Well-being of Future Generations (Wales) Act 2015, along with good practice in democratic accountability. Because of this existing commitment and procedures put into place to achieve this it is unlikely that additional costs would be significant. The extent to costs for this activity would be dependent on the range of activity undertaken. However, the benefits of encouraging local participation in local authority decisions, whilst time consuming and so potentially increasing staff costs in this area would be likely to be offset by better engagement and even cost savings in dealing with potential disputes where local people object to decisions made without their involvement.
- 7.8 The benefits to local authorities will be a revised Code of Recommended Practice for Local Authority Publicity, which will provide up to date information on the content, style and distribution of local authority publicity in the context of the increased use of social media and other digital channels and new legislation. Not updating the Code could have a detrimental effect on local authorities who might otherwise fail to comply with new provisions, as they were not in the Code.

This is the recommended and preferred option.